to the notice of the Court and he considered that a further term of imprisonment would not be justifiable.

Held: it was not open to the Magistrate to pass a sentence of a fine under s. 34 of the Minor Offences Enactment.

[Editorial Note: Section 34(f) of the Minor Offences Enactment (Cap. 46) reads: "any person found between the hours of 11 p.m. and 6 a.m. loitering on any public road or private property and not giving a satisfactory account of himself may be taken into custody by any police officer without a warrant, and shall be liable to imprisonment for six months, . . ." There is no equivalent sub-section in the Minor Offences Ordinance (Cap. 24).]

CRIMINAL REFERENCE.

Philip Clough (Federal Counsel) for the appellant.

Respondent in person.

Wilson J. : — The respondent pleaded guilty to a charge that between the hours of 11 p.m. and 6 a.m. on the 30th July, 1952, he was found at about 3.15 a.m. loitering on the Klang Road and failed to give a satisfactory account of himself. He was found guilty of an offence contrary to Section 34(f) Cap. 46 and was fined $5.

The learned Magistrate stated that taking into consideration the fact that the respondent had been in the lock-up for a month and that no previous convictions had been brought to the notice of the Court he considered that a further term of imprisonment would not be justifiable.

The Deputy Public Prosecutor appealed on the ground that it was not open to the Magistrate to pass the sentence of a fine under Section 34 of Cap. 46. With this contention I agree. The Deputy Public Prosecutor however intimated that he does not press for a further term of imprisonment.

In the circumstances the fine of $5 is remitted and must be repaid to the respondent and the sentence of one month's simple imprisonment to date from the date of his arrest is substituted therefor.

Order accordingly.

PUBLIC PROSECUTOR v. AYASAMY

[A. Cr. J. (Briggs J.) Kuala Lumpur, December 17, 1952]

Juvenile Court — Jurisdiction — Constitution — Juvenile Courts Ordinance, 1947, s. 4(2) & (3).

This was an appeal by the Public Prosecutor against the acquittal of the respondent in the Juvenile Court. The appeal was based on several grounds but the learned Judge only heard argument on one of them, i.e. the question of jurisdiction.

The situation in this case was that the learned President sat with one adviser only and dismissed the case on the failure of the prosecution to call evidence. The question was whether the Court, in these circumstances, was properly constituted.

Held: it is not competent in law for a President to sit as a Juvenile Court for purposes of conducting a trial, unless he has the assistance of two advisers throughout the proceedings. It may be possible for him to make interim orders and to perform certain other functions in the absence of advisers, but the advisers are an essential element of a Juvenile Court conducting a trial, and their absence, or the absence of one of them, renders the proceedings unlawful and abortive.

MAGISTRATE'S CRIMINAL APPEAL.

B. Sheldon (Federal Counsel) for the appellant.

Respondent in person.

Briggs J. (delivering oral judgment): — This appeal is brought by the Public Prosecutor against the acquittal of the respondent in the Juvenile Court. It is based on several grounds, but I have only heard argument on one of them, which, in the view that I take of the appeal, is conclusive. That is the question of jurisdiction. The normal Juvenile Court before which a juvenile is tried consists of a Chairman, who is a President of Sessions Court, and who shall be assisted by two advisers in the exercise of his functions as a Juvenile Court. The provision in question is section 4(2) of the Juvenile Courts Ordinance, 1947, which reads :—

"A Juvenile Court shall consist of a District Judge who, in the exercise of his functions as a Juvenile Court, shall be assisted by two advisers chosen from a panel of persons resident in the State or Settlement nominated by the Ruler in Council or Resident Commissioner, as the case may be. One of such two advisers shall, if practicable, be a woman."

Sub-section (3) of section 4 reads as follows :—

"The functions of the advisers shall be to inform and advise the Court with respect to any consideration affecting the punishment or other treatment of any child or young person brought before it."

The question now before me is whether the limitation of the functions of the advisers to advising the Court as to 'punishment or other treatment' affects the meaning of sub-section (2) of the same section in such a way that it is not necessary for the advisers to assist the learned President in the exercise of functions other than those relating to punishment or treatment. The situation in this case was that the learned President sat with one adviser only and dismissed the case on the failure of the prosecution to call evidence. The question is whether the Court, in these circumstances, was properly constituted. I think it was not. Although the active functions of the advisers only begin after the accused is found guilty, and so becomes liable to punishment or other treatment, they have other passive functions at earlier stages of the proceedings. It is in my view necessary for them to be present during the hearing in order that they should have a full and complete view of the circumstances of the case, since without this they would not be able properly to advise on punishment. I think also that

to give the power of advising on punishment or treatment to an adviser who had not heard the whole of the proceedings would be a clear breach of the principle that justice must be seen to be done. I am of opinion, therefore, that it is not competent in law for a President to sit as a Juvenile Court for purposes of conducting a trial, unless he has the assistance of two advisers throughout the proceedings. It may be possible for him to make interim orders and to perform certain other functions in the absence of advisers, but I think the advisers are an essential element of a Juvenile Court conducting a trial, and that their absence, or the absence of one of them, renders the proceedings unlawful and abortive. In view of this the respondent Ayasamy has clearly not been lawfully tried for the offence with which he was charged.

[His Lordship then went on to deal with the facts of the case. Ed. M.L.J.]

Order accordingly.

RAJASOORIA v. DISCIPLINARY COMMITTEE

[P. C. (Lord Tucker, Lord Cohen, Lord Somervell of Harrow and Mr. L. M. D. de Silva) March 16, 1955]

[Privy Council Appeal No. 5 of 1954]

Advocates and Solicitors Ordinance, 1947, ss. 26 and 27 — Suspension — Discipline — "Grossly improper conduct" — Intention to deceive — Requisition for company meeting — Signatures from original document pasted on new amended document — Some signatories no longer shareholders — No intention to deceive.

The question in this appeal was whether on the facts of the case the appellant, an advocate and solicitor practising in the Federation of Malaya, was guilty of grossly improper conduct in the discharge of his professional duty so as to render him liable to suspension under s. 26(1) of the Advocates and Solicitors Ordinance, 1947. The facts were briefly as follows:

The appellant was instructed to act for certain shareholders in the Foh Hup Omnibus Co., a company incorporated under the Companies Ordinance, 1940, who, being dissatisfied with the conduct of an annual general meeting of the company, desired to call an extraordinary general meeting of the company with a view to removing the directors and secretaries and replacing them by their own nominees. For that purpose a requisition was prepared consisting of three documents in identical terms, which were signed by 24, 29 and 37 shareholders respectively, totalling 90, and handed to the appellant. He wrote to the then secretaries of the company stating that he had been instructed by 90 shareholders to forward a copy of the signed requisition for an extraordinary general meeting of the company and adding that the secretaries might have inspection of the requisition at the Registrar of Companies, Kuala Lumpur, to whom he was forwarding the original list. A few days later the Registrar returned the requisition and requested the appellant to deposit it at the registered office of the company, calling his attention to s. 115 of the Companies Ordinance, pursuant to which the requisition should have stated the names of the dissatisfied shareholders' nominees for appointment as directors and secretaries. A new requisition was subsequently prepared to effect that amendment. The appellant cut off the signatures from the original requisition and attached them by pasting them on to the sheets of the new amended requisition, and signed his name across the joint of each of the three composite documents. At the date of the later purported requisition certain of the alleged 90 signatories were in fact, and contrary to the appellant's belief, no longer shareholders of the company.

The Disciplinary Committee appointed under s. 27 of the Advocates and Solicitors Ordinance were of opinion that the appellant had been guilty of grossly improper conduct within the meaning of s. 26(2)(b) of the Ordinance, but that he did not act with intention to deceive. That finding was accepted by the Supreme Court, who suspended the appellant from practising for a period of six months.

Held: (1) for an advocate and solicitor knowingly and deliberately to submit a false document intending to be acted upon was grossly improper conduct as being dishonourable both to himself and to his profession. The submission of such a document with such intention in itself involved an element of "deceit"; (2) a finding of an intention to deceive is not always an essential element in grossly improper conduct.

Cases referred to:—

(1) *Re G. Mayor Cooke* (1889) 5 T.L.R. 407, 408.

(2) *Allinson v. General Council of Medical Education & Registration* (1894) 1 Q.B. 750, 760.

(3) *In re a Solicitor, Ex parte Law Society* (1912) 1 K.B. 302, 312; 28 T.L.R. 50.

In addition to the cases referred to in the judgment, the following case was cited: *In re Iles, a Solicitor* (1922) 66 S.J. 297.

PRIVY COUNCIL APPEAL.

Bernard B. Gillis Q.C. (*Colin Duncan* with him) for the appellant.

D. A. Grant for the respondents.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by:—

Lord Cohen: — The appellant is an advocate and solicitor practising in the Federation of Malaya. He appeals against an Order of the Supreme Court of the Federation dated the 27th August, 1953, suspending him from practice for a period of six months in respect of each of two charges brought against him but directing that in each case the period of suspension was to commence from the date of the Order.

The Order was made under section 26 of the Advocates and Solicitors Ordinance, 1947 (No. 4 of 1947) It is, so far as material, in the following terms:—

"Section 26. — (1) Every advocate and solicitor shall be subject to the control of the Court and shall be liable on due cause shown to have his admission revoked and to be struck off the roll of the Court or to be suspended from practice for any period not exceeding two years or to be censured. (2) Such due cause may be shown by proof that such advocate and solicitor —

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